

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

333.5133 Counseling; written, informed consent to HIV test; distribution of pamphlet regarding HIV test to test subject; development and contents; availability; signature of test subject; subsequent civil action barred; developing, writing, printing, and distributing pamphlet; HIV test performed on anonymous basis; partner notification; HIV test performed for purpose of research; standard protocol for HIV test; applicability of section to HIV test performed in health facility; applicability of subsections (1) to (3); informing patient of positive test results; counseling.

Sec. 5133. (1) Except as otherwise provided in subsections (12) and (13), a physician who orders an HIV test or a health facility that performs an HIV test shall provide counseling appropriate to the test subject both before and after the test is administered.

(2) Except as otherwise provided in this part, a physician, or an individual to whom the physician has delegated authority to perform a selected act, task, or function under section 16215, shall not order an HIV test for the purpose of diagnosing HIV infection without first receiving the written, informed consent of the test subject. For purposes of this section, written, informed consent consists of a signed writing executed by the test subject or the legally authorized representative of the test subject that includes, at a minimum, all of the following:

(a) An explanation of the test including, but not limited to, the purpose of the test, the potential uses and limitations of the test, and the meaning of test results.

(b) An explanation of the rights of the test subject including, but not limited to, all of the following:

(i) The right to withdraw consent to the test at any time before the administration of the test.

(ii) The right under this part to confidentiality of the test results.

(iii) The right under this part to consent to and participate in the test on an anonymous basis.

(c) The person or class of persons to whom the test results may be disclosed under this part.

(3) Beginning July 28, 1989, a physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function under section 16215 who orders an HIV test shall distribute to each test subject a pamphlet regarding the HIV test on a form provided by the department. The department shall develop the pamphlet, which shall include all of the following:

(a) The purpose and nature of the test.

(b) The consequences of both taking and not taking the test.

(c) The meaning of the test results.

(d) Other information considered necessary or relevant by the department.

(e) A model consent form for the signed writing required under subsection (2). The department shall include in the model consent form all of the information required under subsection (2)(a), (b), and (c).

(4) The department, the Michigan board of medicine, and the Michigan board of osteopathic medicine and surgery shall make the pamphlet required under subsection (3) available to physicians. The Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall notify in writing all physicians subject to this section of the requirements of this section and the availability of the pamphlet by July 10, 1989. Upon request, the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery shall provide copies of the pamphlet, free of charge, to a physician who is subject to this section.

(5) If a test subject is given a copy of the pamphlet required under subsection (3), the physician or individual described in subsection (3) shall include in the test subject's medical record a form, signed by the test subject, indicating that he or she has been given a copy of the pamphlet.

(6) A test subject who executes a signed writing pursuant to subsection (2) is barred from subsequently bringing a civil action based on failure to obtain informed consent for the HIV test against the physician who ordered the HIV test.

(7) The department shall provide the pamphlet required under subsection (3). The department shall develop the pamphlet and have it ready for distribution by June 28, 1989. The department shall write and print the pamphlet in clear, nontechnical English and Spanish. The department shall distribute the pamphlet, upon request and free of charge, to a physician or other person or a governmental entity that is subject to this section.

(8) In addition to complying with the duties imposed under subsection (7), the department shall provide copies of the pamphlet to the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery. The department shall provide copies of the pamphlet to other persons upon written request, at cost, and shall also provide copies of the pamphlet free of charge, upon request, to public or private schools,

colleges, and universities.

(9) An individual who undergoes an HIV test at a department approved testing site may request that the HIV test be performed on an anonymous basis. If an individual requests that the HIV test be performed on an anonymous basis, the staff of the department approved testing site shall administer the HIV test anonymously or under the condition that the test subject not be identified, and shall obtain consent to the test using a coded system that does not link the individual's identity with the request for the HIV test or the HIV test results. If the test results of an HIV test performed under this subsection indicate that the test subject is HIV infected, the staff of the department approved testing site shall proceed with partner notification in the same manner in which a local health department would proceed as described in section 5114a(3) to (5).

(10) Subsection (2) does not apply to an HIV test performed for the purpose of research, if the test is performed in such a manner that the identity of the test subject is not revealed to the researcher and the test results are not made known to the test subject.

(11) A health facility may develop a standard protocol for an HIV test performed upon a patient in the health facility in preparation for an incision or invasive surgical procedure.

(12) This section does not apply to an HIV test performed upon a patient in a health facility if the conditions in subdivisions (a) and (b) or the conditions in subdivisions (a) and (c) are met:

(a) The patient is informed in writing upon admission to the health facility that an HIV test may be performed upon the patient without the written consent required under this section under circumstances described in subdivision (b) or (c). As used in this subdivision, "admission" means the provision of an inpatient or outpatient health care service in a health facility.

(b) The HIV test is performed after a health professional, health facility employee, police officer, or fire fighter, or a medical first responder, emergency medical technician, emergency medical technician specialist, or paramedic licensed under section 20950 or 20952 sustains in the health facility, while treating the patient before transport to the health facility, or while transporting the patient to the health facility, a percutaneous, mucous membrane, or open wound exposure to the blood or other body fluids of the patient.

(c) The HIV test is performed pursuant to a request made under section 20191(2).

(13) Subsections (1) to (3) do not apply if the test subject is unable to receive or understand, or both, the pretest counseling and the pamphlet described in subsections (1) to (3) or to execute the signed writing described in subsection (2), and the legally authorized representative of the test subject is not readily available to receive the pamphlet or execute written consent for the test subject.

(14) If the results of an HIV test performed pursuant to subsection (11) or (12) or under circumstances described in subsection (13) indicate that the patient is HIV infected, the health facility shall inform the patient of the positive test results and provide the patient with appropriate counseling regarding HIV infection and acquired immunodeficiency syndrome.

History: Add. 1988, Act 488, Eff. Mar. 30, 1989;—Am. 1994, Act 200, Imd. Eff. June 21, 1994;—Am. 1994, Act 420, Eff. Mar. 30, 1995.

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